Datuk Bandar Majlis Bandaraya Shah Alam & Anor v Yusuf bin Awang & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B–01–67 OF 2004
DENIS ONG, MOHD GHAZALI AND JAMES FOONG JJCA
9 FEBRUARY 2007

Local Government — Squatters — Removal of — Demolishment of squatter huts — Undated notices issued by local authority pursuant to reg 10 of the Essential (Clearance of Squatters) Regulations 1969 — Whether such notices valid — Seven-day grace period, how reckoned — Whether reckoned from the date of service of such notice — Essential (Clearance of Squatters) Regulations 1969, regs 3, 10

Local Government — Squatters — Removal of — Power of local authority — Whether such power could be restrained by perpetual injunction — Whether High Court seized of jurisdiction to issue such injunction against local authority — Effects of such perpetual injunction — Essential (Clearance of Squatters) Regulations 1969

Land Law — Adverse possession — Squatters — Rights in law and in equity

The appellants' served notices pursuant to reg 10 of the Essential (Clearance of Squatters) Regulations 1969 ('Regulations') on the respondents who had built and were occupying structures and/or squatter huts on certain pieces of private land ('the land'). The notices informed the respondents inter alia that they were occupying the structures and/or squatter huts without lawful permission and had therefore committed an offence under the said Regulations. The respondents were further given seven days from the date of the notices to remove and/or demolish the structures and/or squatter huts, failing which the appellants would take appropriate action. The said notices were personally served on some of the respondents or affixed on the premises of the other respondents on 15 and 16 October 2003. The notices were not issued with a printed date but only contained a space for the recipient of such notice to record the date he had been served with such notice. None of the respondents acknowledged receipt of the said notices. The respondents filed two applications in the High Court. The first application — encl 1 — sought inter alia to: (i) declare the undated notices issued by the first appellant null and void; and (ii) restrain the appellants from evicting the respondents and/or harassing them. The second application — encl 3 — was for an interim injunction pending the disposal of encl 1 application. The High Court first heard and allowed the encl 3 application. When encl 1 subsequently came up for hearing, the High Court allowed the application with costs and granted the reliefs sought. The High Court judge, in his grounds of judgment said that he relied 'in toto on the same ground' as what he had decided in encl 3. He then reproduced his entire grounds of judgment given for encl 3. The appellants appealed against the decision in encl 1.

Held, by majority allowing the appeal:

(1) (per **Mohd Ghazali JCA**, **Denis Ong JCA** concurring) Once the second appellant formed the opinion that it was expedient and necessary — after taking into account the public interest — to demolish the squatter huts situated on the land, all it had to do was to give seven days notice to the respondents and at the end of that period, enter on the land to demolish the squatter huts. The fact that the notices were undated did not nullify the notices. The respondents could not say they were not aware of the said notices as they had challenged the notices through their application. Further, the said notices were served on them in compliance with s 108 of the Local Government Act 1976. Although the said notices were not dated, the seven-day period would run from the date of service of the said notices (see paras 20–21).

(2) (per **Mohd Ghazali JCA**, **Denis Ong JCA** concurring) In the instant appeal the issue was whether the buildings erected and owned by the respondents were 'squatter huts' as defined clearly under reg 3. In this regard the respondents had failed to prove that their respective buildings were erected with the approval of the second appellant. The respondents had not even shown that they were in lawful occupation of the said land — which land was registered in the name of a third party. The respondents being squatters, had no right in law or equity (see para 22).

(3) (per **Mohd Ghazali JCA**, **Denis Ong JCA** concurring) There was no merit in the respondent's argument that the appellants were not the registered proprietors under the National Land Code, since reg 10 clearly allowed a local authority to enter private land to demolish any squatter hut. There was also no need for the respondents to submit — as they did — that the appellants were not the 'State Authority' under the National Land Code (see para 23).

(4) (per **Mohd Ghazali JCA**, **Denis Ong JCA** concurring) The High Court judge had misconstrued reg 10 by reading into it 'preconditions' that had to be satisfied by the appellants. He had also erred in treating the matter as if it were an application for judicial review (see paras 34–35).

(5) (per **Mohd Ghazali JCA**, **Denis Ong JCA** concurring) The High Court judge erred in law in granting the second prayer, which was in effect a perpetual injunction and beyond the jurisdiction of the court. This would have allowed the respondents to establish their right to occupy the squatter huts on the said land and would have prevented the appellants from taking any fresh or further action against the respondents. The appellants had a statutory duty to perform under the Regulations and they could not be prevented from doing so by a perpetual injunction The perpetual injunction would have further resulted in a vesting of a right to remain on the said land and indirectly the vesting of a right to occupy land by prescription — title by prescription — being foreign to Malaysian land law (see para 37).

(6) (per **Mohd Ghazali JCA**, **Denis Ong JCA** concurring) The respondents had not shown that there was a threatened invasion of their legal rights.

The respondents also failed to show that they were not squatters and had a legal right to occupy the land; and that their abode was not a squatter hut (see para 42).

(7) (per **James Foong JCA** dissenting, allowing the appeal in part) The approach of the High Court judge had several limitations. Firstly, different legal principles or tests apply to different kinds of application. In the instant case, encl 3 was an application for an interim injunction whereas encl 1 was an application for a declaration and an order for a permanent injunction. In encl 3, the test as stated in *American Cyanamic Co v Ethicon Ltd* [1975] AC 396 required a consideration of: whether there was a serious question to be tried; adequacy of damages and balance of convenience. However for encl 1, the respondents had to prove their case to the required civil standard. Further, an issue raised in one application may not be raised in another (see paras 52–53).

(8) (per **James Foong JCA** dissenting, allowing the appeal in part) Regulation 10 of the Regulations specifies a seven-day grace period from the date of the notice — based on humanitarian grounds — for the squatters to pack and go. In the instant case, the notices were undated and without a date of issuance, the respondents could not know when the seven-day period was to commence. Since the notices were without a commencement date, they were therefore invalid and bad in law (see para 59).

(9) (per **James Foong JCA** dissenting, allowing the appeal in part) Regulation 10 of Regulations is not concerned with the right of a person to be on the land. It relates only to the structure on the land known as a squatter hut as defined under reg 3. There is nothing in reg 10 that requires an occupant of such structure to be a squatter or be proved a trespasser. It is therefore irrelevant to speak of the right to occupy the land on which the squatter hut is erected and of the absence of evidence to prove that the occupants are squatters (see paras 63–64).

(10) (per **James Foong JCA** dissenting, allowing the appeal in part) Though the appellants erred this time by not inserting a date when issuing the notices, this should not prevent them from carrying out their lawful duties again if the circumstances warranted, and if they complied with the conditions set out in reg 10(1) of the Regulations. Therefore if the second relief was granted, the appellants would be perpetually prohibited from carrying out their legal duties under the law even under different circumstances. Such a perpetual injunction, firstly would indirectly create a perpetual right for the respondents to remain permanently on the said land with their structures. Secondly, this would even prevent the registered owner of the said land from seeking assistance from the appellants to evict the respondents if their structures were found to be squatter huts (see para 65).

[Bahasa Malaysia summary

Perayu-perayu telah menyampaikan notis-notis menurut peraturan 10 Peraturan-Peraturan Penting (Pembasmian Setinggan) 1969 ('Peraturan tersebut') ke atas responden-responden yang telah membina dan menetap dalam struktur dan/atau rumah setinggan atas beberapa bidang tanah persendirian ('tanah tersebut').

Notis-notis tersebut memberitahu responden-responden antara lain bahawa mereka menetap dalam struktur dan/atau rumah setinggan tanpa kebenaran sah dan oleh itu melakukan satu kesalahan di bawah Peraturan tersebut. Responden-responden seterusnya telah diberikan tujuh hari daripada tarikh notis-notis tersebut untuk mengalih dan/atau meruntuhkan struktur dan/atau rumah setinggan tersebut, dan jika gagal perayu-perayu akan mengambil tindakan sewajarnya. Notis-notis tersebut telah disampaikan kediri ke atas beberapa responden-responden atau telah dilekatkan pada premis responden-responden lain pada 15 dan 16 Oktober 2003. Notis-notis tersebut tidak dikeluarkan dengan tarikh bercetak tetapi hanya mengandungi ruang untuk penerima notis tersebut merekodkan tarikh beliau diserahkan notis itu. Tiada antara responden-responden yang mengesahkan penerimaan notis-notis tersebut. Responden-responden telah memfailkan dua permohonan di Mahkamah Tinggi. Permohonan pertama — lampiran 1 — memohon antara lain: (i) mengisytiharkan notis-notis tidak bertarikh yang diserahkan oleh perayu pertama sebagai terbatal dan tidak sah; dan (ii) menghalang perayu daripada menghalau responden-responden dan/atau mengugut mereka. Permohonan kedua — lampiran 3 — adalah untuk injunksi interim sementara menunggu selesainya permohonan lampiran 1. Mahkamah Tinggi terlebih dahulu mendengar dan membenarkan permohonan lampiran 3. Apabila lampiran 1 kemudiannya didengar untuk perbicaraan, Mahkamah Tinggi membenarkan permohonan tersebut dengan kos dan memberikan relif-relif yang dipohon. Hakim Mahkamah Tinggi, dalam alasan-alasan penghakimannya menyatakan beliau bergantung 'in toto on the same ground' berhubung apa yang telah beliau putuskan dalam lampiran 3. Beliau kemudian mengemukakan semula keseluruhan alasan-alasan penghakimannya yang diberikan untuk la,piran 3. Perayu-perayu telah merayu terhadap keputusan dalam lampiran 1.

Diputuskan, dengan majoriti membenarkan rayuan tersebut:

(1) (oleh **Mohd Ghazali HMR**, **Denis Ong HMR** bersetuju) Setelah perayu kedua membentuk pendapat bahawa ia adalah cepat dan perlu — dengan mengambilkira kepentingan awam — untuk merobohkan rumah setinggan yang terletak atas tanah tersebut, apa yang perlu dilakukan adalah untuk memberi notis tujuh hari kepada responden-responden dan di akhir tempoh itu, memasuki tanah tersebut untuk merobohkan rumah setinggan tersebut. Fakta bahawa notis-notis tersebut tidak bertarikh tidak membatalkan notis-notis tersebut. Responden-responden tidak boleh mengatakan mereka tidak mengetahui tentang notis-notis tersebut kerana mereka telah mencabar notis-notis tersebut melalui permohonan mereka. Bahkan, notis-notis tersebut telah diserahkan ke atas mereka menurut s 108 Akta Kerajaan Tempatan 1976. Meskipun notis-notis tersebut tidak bertarikh, tempoh tujuh hari bermula dari tarikh penyampaian notis-notis tersebut (lihat perenggan 20–21).

(2) (oleh **Mohd Ghazali HMR**, **Denis Ong HMR** bersetuju) Dalam rayuan ini isu sama ada bangunan yang dibina dan dimiliki oleh responden-responden adalah 'squatter huts' seperti yang ditafsirkan di bawah peraturan 3. Oleh itu responden-responden telah gagal membuktikan bahawa bangunan mereka dibina dengan kebenaran perayu kedua. Responden-responden juga tidak menunjukkan bahawa mereka menetap secara sah atas tanah tersebut — tanah

yang didaftarkan atas nama pihak ketiga. Responden-responden adalah penduduk setinggan, dan tiada hak di sisi undang-undang atau ekuiti (lihat perenggan 22).

(3) (oleh **Mohd Ghazali HMR**, **Denis Ong HMR** bersetuju) Tiada merit dalam hujah responden bahawa perayu-perayu bukan tuan punya berdaftar di bawah Kanun Tanah Negara, memandangkan peraturan 10 jelas membenarkan pihak berkuasa tempatan memasuki tanah persendirian untuk merobohkan mana-mana rumah setinggan. Tidak perlu juga untuk responden berhujah — kerana mereka telah berbuat sedemikian — yang perayu-perayu bukanlah 'State Authority'di bawah Kanun Tanah Negara (lihat perenggan 23).

(4) (oleh **Mohd Ghazali HMR**, **Denis Ong HMR** bersetuju) Hakim Mahkamah Tinggi telah menyalahtafsirkan peraturan 10 dengan membaca 'preconditions'nya yang perlu dipenuhi oleh perayu-perayu. Beliau juga terkhilaf dengan menganggap perkara tersebut seperti suatu permohonan untuk semakan semula (lihat perenggan 34–35).

(5) (oleh **Mohd Ghazali HMR**, **Denis Ong HMR** bersetuju) Hakim Mahkamah Tinggi terkhilaf dari segi undang-undang kerana membenarkan permohonan kedua, yang mempunyai kesan injunksi berterusan dan melampaui bidang kuasa mahkamah tersebut. Ini membenarkan responden-responden membuktikan hak mereka untuk menetap dalam rumah setinggan atas tanah tersebut dan menghalang perayu-perayu daripada mengambil tindakan baru atau seterusnya terhadap responden-responden. Perayu-perayu mempunyai tanggungjawab statutori untuk dilaksanakan di bawah Peraturan tersebut dan mereka tidak boleh dihalang daripada berbuat sedemikian oleh injunksi berterusan. Injunksi berterusan seterusnya wujud daripada hak yang diberikan untuk kekal atas tanah tersebut dan secara tidak langsung memberikan hak untuk mendiami tanah melalui preskripsi — hak milik melalui preskripsi — yang asing kepada undang-undang tanah Malaysia (lihat perenggan 37).

(6) (oleh **Mohd Ghazali HMR**, **Denis Ong HMR** bersetuju) Responden-responden tidak menunjukkan bahawa terdapat ugutan pencerobohan hak-hak sah mereka. Responden-responden juga gagal menunjukkan mereka bukan penduduk setinggan dan mempunyai hak sah mendiami tanah tersebut, dan kediaman mereka bukannya rumah setinggan (lihat perenggan 42).

(7) (oleh **James Foong HMR** menentang, membenarkan sebahagian daripada rayuan) Pendekatan hakim Mahkamah Tinggi mempunyai beberapa batasan. Pertama, prinsip atau ujian sah yang berbeza terpakai untuk pelbagai jenis permohonan. Dalam kes ini, lampiran 3 merupakan satu permohonan untuk injunksi interim manakala lampiran 1 merupakan permohonan untuk deklarasi dan perintah untuk injunksi tetap. Dalam lampiran 3, ujian seperti yang dinyatakan dalam *American Cyanamic Co v Ethicon Ltd* [1975] AC 396 memerlukan pertimbangan: sama ada terdapat persoalan serius yang perlu dibicarakan; ganti rugi yang memadai dan imbangan kesesuaian. Namun untuk lampiran 1, responden-responden telah membuktikan kes

mereka menurut piawai sivil. Bahkan, satu isu yang ditimbulkan dalam satu permohonan mungkin tidak akan ditimbulkan dalam isu yang berlainan (lihat perenggan 52–53).

(8) (oleh **James Foong HMR** menentang, membenarkan sebahagian daripada rayuan) Peraturan 10 Peraturan tersebut menetapkan tempoh tujuh hari daripada tarikh notis — berdasarkan sebab kemanusiaan — untuk penduduk setinggan mengemas barang dan pindah. Dalam kes ini, notis-notis tersebut tidak bertarikh dan tanpa tarikh pengeluaran, responden-responden tidak mengetahui bila tempoh tujuh hari itu bermula. Memandangkan notis-notis tersebut tiada tarikh permulaan, ianya tidak sah dan salah di sisi undang-undang (lihat perenggan 59).

(9) (oleh **James Foong HMR** menentang, membenarkan sebahagian daripada rayuan) Peraturan 10 Peraturan tersebut bukan berkaitan hak seseorang berada atas tanah. Ia hanya berkaitan struktur atas tanah yang dikenali sebagai rumah setinggan seperti ditafsirkan di bawah peraturan 3. Tiada apa-apa dalam peraturan 10 yang memerlukan seorang penghuni struktur sedemikian merupakan seorang penduduk setinggan atau dibuktikan sebagai penceroboh. Oleh itu tidak relevan untuk mengatakan tentang hak mendiami tanah di mana rumah setinggan dibina dan tentang ketiadaan keterangan untuk membuktikan bahawa penghuni-penghuni tersebut adalah penduduk setinggan (lihat perenggan 63–64).

(10) (oleh **James Foong HMR** menentang, membenarkan sebahagian daripada rayuan) Meskipun perayu-perayu tersilap kali ini dengan tidak memasukkan tarikh semasa mengeluarkan notis-notis tersebut, ini tidak menghalang mereka daripada melaksanakan tanggungjawab sah mereka sekali lagi jika keadaan memerlukan, dan jika mereka mematuhi dengan syarat-syarat yang ditetapkan dalam peraturan 10(1) Peraturan tersebut. Oleh itu jika relif kedua diberikan, perayu-perayu akan terus dihalang daripada melaksanakan tanggungjawab sah mereka di bawah undang-undang meskipun di bawah keadaan berbeza. Injunksi berterusan sedemikian, pertamanya secara tidak langsung membentuk hak berterusan untuk responden-responden kekal atas tanah tersebut dengan struktur mereka. Keduanya, ini juga akan menghalang pemilik berdaftar tanah tersebut mendapat bantuan daripada perayu-perayu untuk menghalau responden-responden jika struktur mereka didapati adalah rumah setinggan (lihat perenggan 65).]

Notes

For a case on removal of squatters, see 10 *Mallal's Digest* (4th Ed, 2005) para 182. For cases on squatters, see 8(2) *Mallal's Digest* (4th Ed, 2006) paras 2100–2102.

Cases referred to

American Cyanamic Co v Ethicon Ltd [1975] AC 396 (refd)
Chief Constable of the North Wales Police v Evans [1982] 3 All ER (refd)
PP v Datuk Hj Harun Hj Idris (No 2) [1977] 1 MLJ 15 (refd)
Sidek bin Haji Muhammad & 461 Ors v The Government of the State of Perak & Ors [1982] 1 MLJ 313 (refd)

A *Yusuf bin Awang v Datuk Bandar Majlis Bandaraya Shah Alam & Majlis Bandaraya Shah Alam* [2004] 5 MLJ 360 (refd)

Legislation referred to

Courts of Judicature Act 1964 s 69(1)
B Essential (Clearance of Squatters) Regulations 1969 regs 2, 3, 6(1), 7, 8, 10(1), 22
Interpretation Acts 1948 and 1967
Federal Constitution art 160(2)
Local Government Act 1976 ss 2, 9, 108
National Land Code
Specific Relief Act 1950 ss. 50, 51(2), 52(1), (3)

C

Appeal from: Originating Summons No MT1–21–247 of 2003 (High Court, Shah Alam)

Ahmad Sharizal Azuar bin Jimin (Sharizal Jimin & Co) for the appellant.
D *Teng Chang Khim (Teng Chang Khim & Co) for the respondents.*

Mohd Ghazali JCA (delivering majority judgment):

E **[1]** This decision is not unanimous. There has been a division of opinion in this quorum. The majority opinion of Denis Ong and Mohd Ghazali JJCA concur that this appeal be allowed and we make the orders as specified in the last paragraph of the judgment. Our learned brother, James Foong JCA dissents. His opinion is that this appeal be dismissed in part only, namely, that the declaration granted as per the
F first prayer in the originating summons be affirmed and that the appeal in relation to the injunction granted as per the second prayer be allowed.

[2] The first appellant is the Mayor of the Shah Alam City Council. The second appellant is the Shah Alam City Council, a local authority within the meaning of the Local Government Act 1976 ('the Act'). The respondents are individuals who are
G occupants of two pieces of land known as GRN 43019, Lot 37448 and GM 1849, Lot No 17494 Mukim Kapar, Daerah Klang, Selangor ('the said property'). At the material time the owner of the said property is a company named Hock Hup Developments Sdn Bhd (now renamed as Ken Rimba Jaya Sdn Bhd).

H **[3]** On 15 October 2003 the appellants served notices pursuant to reg 10 of the Essential (Clearance of Squatters) Regulations 1969 ('the said Regulations') on the first to the ninth respondents. Similar notices were served on the 10th, 11th and 12th respondents on 16 October 2003. These notices (hereafter referred to collectively as 'the said notices') essentially informed the respondents that they have constructed or
I are occupying squatter huts on the said property and hence have committed an offence under the said Regulations. As such they were required within seven days from the date of the notices to remove any person or moveable property and demolish their respective squatter huts. It was stated therein that if the respondents fail to comply with the notice, the appellants will take the necessary action without further notice.

[4] By virtue of the Essential (Clearance of Squatters) Regulations (Selangor) Order 1969, the said Regulations shall apply to the State of Selangor. It would be appropriate at this stage to reproduce the relevant provisions of the said Regulations. Regulation 2, an interpretation provision, provides, inter alia, as follows:

> 'occupier' means the person in actual occupation of the land or building in respect of which the word is used, or having the charge, management or control thereof either on his own account or as agent of another person, but does not include a lodger;
>
> 'private land' means any land other than State land, reserved land, mining land or forest land;
>
> 'squatter hut' means any house, hut, shed, stall, lean-to, shelter, roofed enclosure or any extension or structure attached to any building or other erection, of whatever materials made and whether used for the purpose of a human habitation or otherwise which has been erected or is in the course of erection otherwise than in accordance with a plan approved by a local authority or in respect of which a licence issued by a local authority has been cancelled, withdrawn or has expired and is situated on any land;

[5] The said property is private land and hence regs 6, 7, 8 and 10 found in Part III of the said Regulations entitled 'Private Land' would be relevant; they read:

> 6. Owner to demolish squatter huts on his land.
>
> (1) The owner of any private land shall upon being served with a notice in writing by a local authority demolish the squatter hut on his land within such period as the local authority may in the notice specify.
>
> (2) Upon the demolition of the squatter hut on the land referred to in the notice, the owner shall forthwith inform the local authority of the fact.
>
> 7. Owner may request the local authority to demolish squatter huts on his land.
>
> In the case where the owner is unable to demolish the squatter hut within the time specified in the notice referred to in regulation 6, the owner may request the local authority to carry out the requirements of the notice in which case the owner shall:
>
> (a) deposit with the local authority such sum of money (in the form of cash or Banker's Guarantee) as the local authority may deem sufficient for the purpose of meeting the cost and expenses of —
>
> (i) demolishing the squatter huts;
>
> (ii) removal of the movable property found in the squatter hut on the land at a rate not exceeding $40 for every trip made by wagon for the purpose of the removal and storage;
>
> (iii) storing the movable property at the rate of $5 per day if it is not claimed on the day the movable property is removed;
>
> (iv) any other activities incidental to or arising out of subparagraphs (i), (ii) and (iii); and
>
> (b) indemnify and keep indemnified the local authority against any claim, damage, loss, action or proceedings that may be brought against the local authority including any cost and expenses arising out of and incidental to sub-paragraphs (i), (ii), (iii) and (iv) of paragraph (a).
>
> 8. Local authority may demolish squatter hut in pursuance of regulation 7.
>
> A local authority, its agents or servants may in pursuance of regulation 7, after giving 7 days' notice in writing to the occupier:

(a) enter by day or by night the land for the purpose of summarily demolishing any squatter hut; and

(b) remove any person or movable property in any squatter hut; and

(c) summarily demolish any squatter hut on the land.

10. Local authority may demolish squatter hut without owner's request.

(1) If in the opinion of a local authority it is expedient and necessary to do so having regard to the public interest then notwithstanding regulations 6 and 7, the local authority, its agents or servants may, after giving 7 days' notice in writing to the occupier:

(a) enter by day or by night any private land for the purpose of summarily demolishing any squatter hut; and

(b) remove any person or movable property in any squatter hut;

(c) summarily demolish any squatter hut on the land.

(2)...

11. Voluntary arrangements as alternative to regulations 6,7,8 and 10.

Nothing in regulations 6, 7, 8 and 10 shall prevent a local authority from entering into any voluntary arrangement with the owner if the arrangement is equitable and is in the opinion of the local authority to be in the public interest.

[6] In relation to service of notices, regulation 22 entitled 'Service of Notices' has been repealed. It is now governed by section 108 of the Act which reads:

108. Notices, etc.

(1) Notices, orders, warrants, licences, receipts and other similar documents may be in print or partly in writing and partly in print.

(2) Service of a document on any person shall be effected —

(a) *by delivering the same to such person or by delivering the same at the last known place of residence of such person to an adult member of his family;*

(b) *by leaving the same at the usual or last known place of residence or business of such person in a cover addressed to such person; or*

(c) by forwarding the same by post in a prepaid letter addressed to such person at his usual or last known place of residence or business.

(3) *A document required to be served on the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the 'owner' or 'occupier' of such premises without further name or description and may be served by delivering the same to some adult person on the premises or, if there is no such person on the premises to whom the same can with reasonable diligence be delivered, by fixing the same on some conspicuous part of the premises.*

(Emphasis added.)

[7] The said notices that were served on the respondents were worded as follows:

PERATURAN-PERATURAN PERLU (PEMBERSIHAN SETINGGAN-SETINGGAN 1969) NOTIS MEROBOH BANGUNAN (PERATURAN 10)

Adalah dimaklumkan bahawa satu siasatan/bancian telah dijalankankan dan didapati tuan/puan telah mendirikan/mendiami binaan setinggan di - (address) - tanpa kebenaran dari pihak Majiis.

2. Oleh yang demikian, tuan/puan didapati melakukan kesalahan di bawah Peraturan-Peraturan Perlu (Pembersihan Setinggan-Setinggan) 1969. Tuan/Puan dikehendaki dalam tempoh 7 hari dari tarikh notis ini supaya menjalankan kerja-kerja yang perlu bagi maksud itu iaitu:-

(a) mengalihkan apa-apa orang atau harta alih dan

(b) merobohkan apa-apa binaan di atas tanah tersebut.

SILA AMBIL PERHATIAN sekiranya tuan/puan didapati gagal/ingkar mematuhi notis ini sehingga luput tempoh masa yang ditetapkan, pihak Majlis boleh mengambil tindakan tanpa sebarang notis selanjutnya ditetapkan lagi.

Apa-apa kerosakan dan kerugian adalah tanggungjawab tuan/puan sendiri. Pihak Majlis tidak akan memberi sebarang tuntutan ganti rugi. Pihak Majlis juga akan menuntut kos dalam mengambil tindakan di atas.

(Sign.)

b/p Datuk Bandar

Majlis Bandaraya Shah Alam

PENERIMAAN NOTIS

Saya - (name) - mengaku telah menerima notis seperti di atas.

(Sign.) No. Kad Pengenalan:

Tarikh:

[8] The said notices were purportedly served on the 1st and the 4th to the 9th respondents or 'to some adult person on the premises' on 15 October 2003 and the 10th, 11th and 12th respondents on 16 October 2003. In relation to the 2nd and 3rd respondents, the notices were purportedly affixed 'on some conspicuous part of the premises'. None of the respondents or the 'adult person on the premises' acknowledged receipt of the said notices.

[9] On 21 October 2003 the respondents ('plaintiffs') filed an originating summons against the appellants ('defendants') and prayed for the following reliefs:

(i) that the said notices issued by the appellants under reg 10 of the said Regulations be declared as null and void; and

(ii) that the appellants be restrained from evicting the respondents by any manner whatsoever from the said property including harassing and threatening the respondents.

[10] We must mention here that prior to the hearing of the originating summons the learned judge, Suriyadi J (as he then was) had on 6 November 2003 granted an

interim injunction pending its disposal. The appellants appealed against that decision. We have not been enlightened as to whether that appeal has been disposed off or is still pending hearing. Be that as it may, the learned judge's grounds of decision on the granting of that interim injunction was reported in the Malayan Law Journal (see *Yusof bin Awang v Datuk Bandar Majlis Bandaraya Shah Alam and Majlis Bandaraya Shah Alam* [2004] 5 MLJ 360). Subsequently, in granting the orders prayed for by the respondents in the originating summons, the learned judge reproduced his grounds of decision in relation to the interim injunction that he granted earlier as part of his judgment. This was how he put it in his grounds of decision in relation to the instant appeal:

> To assist the Appeal Court's panel deal with the current appeal, without the necessity of having to suffer the indignity of administrative glitches, I herewith reproduce the very same grounds that I had prepared for the appeal against my of 6 November 2003 decision:

[11] At the end of the day, the learned judge granted the declaration prayed for and granted the injunction. The learned judge's grounds of decision in the originating summons is basically similar to his earlier grounds of decision when he granted the interim injunction.

[12] We would now deal with his grounds of decision, as it is, in relation to the instant appeal (pp 18–66 of the appeal record). At the outset, the learned judge said that even though the prayers in the originating summons and the application for interim injunction 'differed in their respective relief, bearing in mind that the facts were applicable to both the applications I had not hesitated in granting the orders prayed for by the plaintiffs'. The learned judge then highlighted the facts as ventilated before him, namely:

(i) it was the policy of the State Government of Selangor to enforce the program of squatter cleansing from the State;

(ii) the appellants had received 'discreet instructions' from the State Secretary's office pursuant to the directions of the State Executive Council that all structures standing on the said property be demolished;

(iii) the very part of the said property occupied by the respondents has been earmarked for that program which inevitably meant the demolition of the respondents' houses;

(iv) the developer appointed to develop the said property has made the following offer to all occupants of squatter huts existing on the said property and which included the respondents, namely —

(a) low cost apartments to be built on the said property will be offered to the occupants of the squatter huts at a cost of RM35,000 per unit;

(b) an ex gratia payment of RM7,200 to each family; and

(c) an exemption from the 10% payment of any bank loan in the event the offer to purchase an apartment unit is taken up.

[13] It was pointed out by the appellants that the 4th, 5th, 7th and 9th respondents had taken up the offer and had signed agreements in relation thereto. Be that as it may, in pursuing the orders prayed for in the court below, the respondents canvassed, inter alia, the following grounds:

(i) the said notices were undated and defective;

(ii) the notices contravened the said Regulations;

(iii) the respondents never received any eviction notices from the owner of the said property prior to the said notices;

(iv) the appellants had acted ultra vires the said Regulations.

[14] In relation to reg 10 of the said Regulations, the learned judge was of the view that the 'preconditions' found therein are 'quite stringent' and 'unless the relevant ingredients have been fully satisfied the invocation of the rule will not be permitted'. He then said:

> In crystal clear terms, the above rule requires a subjective opinion to have been formulated by the defendants, before the draconian provision is adhered to. Here, not only is there no independent evidence to establish that the actions had come about as a result of a subjective deliberation, but brazenly admitted that the drastic action undertaken was in response to some administrative direction of another entity. Interestingly enough, the direction of the State Secretary apart from it being irrelevant, not only did not come about as a by-product of its own study and deliberation, but derived from another source, ie the State Exco. Evidentially, apart from the question of how the Exco arrived at that conclusion being a total mystery, let alone the conclusion being twice removed, it was thus tainted on the premise of it being hearsay based. Regardless of the dearth of evidence considered by the State Exco (certainly not a local authority), it was quite clear to the court that the defendants had never exercised its mind to subjectively conclude that it was expedient and necessary to demolish the houses in the interest of the public. This surely was a serious flaw, which prima facie was not in consonant with the prerequisite of the impugned provision, necessitating the stopping of the defendants in their tracks before any inconsolable damage was done prior to the trial.

[15] In relation to the said notices, the learned judge said:

> A scrutiny of them will reveal that the defendants had stated that they had allegedly carried out an inquiry/census, and had further asserted that the plaintiffs have built squatter structure, which were an infringement pursuant to the impugned law. To begin with, the issue of inquiry/census was without foundation as none was carried out, bearing in mind that the action which culminated in these notices, was pursuant to a third party's direction.

[16] He then concluded as follows:

> To summarize the matter, I had found the action of the defendants to be flawed on many grounds, inter alia:
>
> (i) failure of the defendants to formulate their own opinion (subjective) as required by rule 10;
>
> (ii) failure of good service of the relevant notices on the plaintiffs;
>
> (iii) the notices being misleading and hence invalid; and

(iv) failure to establish that the plaintiffs were squatters in the context of r 10.

[17] Thus, based upon the above reasons the learned judge granted the declaration and injunction prayed for.

[18] The respondents have filed this application for the two reliefs which, to us, would denote that the said notices were served on them or were brought to their attention within the contemplation of s 108 of the Act. The facts showed the following:

(i) the 1st, 4th, 6th, 8th, 9th, 10th and 12th respondents refused to acknowledge receipt of the notices addressed to them and hence the words 'tiada kerjasama' (no co-operation) were endorsed on their respective notices by the appellants;

(ii) the notices addressed to the 2nd and 3rd respondents were served by affixing it on their respective squatter huts;

(iii) the notice addressed to the 5th respondent was served on his wife and she refused to acknowledge receipt and hence the words 'tiada kerjasama' (no co-operation) were endorsed on the notice by the appellants;

(iv) the notice addressed to the 7th respondent was served on a female person by the name of Normayani binti Othman and she refused to acknowledge receipt and hence the words 'tiada kerjasama' (no co-operation) were endorsed on the notice by the appellants;

(v) the notice addressed to the 11th respondent was served on the 12th respondent who, from the address stated therein, was living next door and he refused to acknowledge receipt of it.

[19] The respondents have now prosecuted the matter by seeking the reliefs sought for. It was their main contention that they cannot be evicted, implying they have a right to occupy the said property and have an interest therein. They claimed they are occupiers with their own buildings on the said property. They have not however shown anything to denote they are in lawful occupation of the said property and that the buildings they owned were erected in accordance with plans approved by the second appellant being the local authority. The appellants' main reason in issuing the said notices were that the buildings erected by the respondents on the said property are 'squatter huts' within the meaning assigned thereto under the said Regulations. If it was the respondents' case that these buildings were erected with plans approved by the second appellant, all they need to do is to show to the appellants the documents pertaining to that approval upon receipt of the said notices instead of challenging the same by this application. They however have decided to attack the said notices by contending, inter alia, that the same were undated and therefore 'scandalous, frivolous and vexatious' and were not signed and stamped by the appellant's authorized and 'gazetted' legal representatives. They even contended that the appellants had never approved or 'gazetted' and adopted the said Regulations as their bye-laws, notwithstanding the existence of the Essential (Clearance of Squatters) Regulations (Selangor) Order 1969, and hence has no jurisdiction to act under the said Regulations. We cannot fathom these arguments. Another argument canvassed by the respondents was that the appellants were not the registered proprietors of the

said property by virtue of the National Land Code ('the Code'). Further, the appellants were not the 'State Authority' as provided by the Code. A

[20] It is our view that under the circumstances of this instant appeal, all the second appellant need to do is, once it is of the opinion that it is expedient and necessary after taking into account the public interest to demolish any squatter hut as defined under reg 3 of the said Regulations situated on the said property, to give seven days notice to the respondents and at the end of that period, enter on the said property for the purpose of demolishing the squatter huts. It was argued that the said notices were not dated and hence null and void. We would think this omission, if at all it was one, cannot nullify the said notices. The respondents cannot dispute that they were not aware of the said notices as they have deemed it fit to challenge the said notices by pursuing this application. The said notices were served on them in compliance with the provisions of s 108 of the Act, viz., by delivering the same to such person or delivering the same at the last known place of residence of such person to an adult member of his family or leaving the same at the usual or last known place of residence or by fixing the notices on some conspicuous part of the premises. B C D

[21] The evidence showed that the said notices were served on the 1st to the 9th respondents on 15 October 2003 and the 10th to the 12th respondents on 16 October 2003. As the said notices were not dated, the seven days period would run from the date of service of the said notices. We cannot see how it can be argued that the said notices are defective just because the same were not dated. The said notices clearly state that the occupier of the squatter hut has seven days to move any moveable property from the premises and to demolish the squatter hut. Regulation 10 of the said Regulations clearly states a local authority may enter the private land in question 'after giving seven days' notice to the occupier' to demolish the squatter hut. In our view, time would start running from the date such a notice is served. As such the argument that the said notices were defective being undated or that it were misleading cannot hold water. We cannot see how the respondents were prejudiced by this omission in relation to date when time would only start running after seven days, viz, from the date of service of the said notices. E F G

[22] Another point canvassed by the respondents was that the appellants failed to establish that the respondents are squatters. We would think that the issue in the instant appeal is whether the buildings erected and owned by the respondents are 'squatter huts'. The definition of 'squatter hut' in regulation 3 of the said Regulations is very clear. Section 101(1) of the Evidence Act 1950 provides 'whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist'. Thus, the respondents must prove that their respective buildings were erected with plans approved by the local authority, ie, the second appellant. They have not even shown that they are in lawful occupation of the said property. It is an undisputed fact that the registered owner of the said property is Hock Hup Developments Sdn Bhd (now known as Ken Rimba Jaya Sdn Bhd) and not the respondents. Being squatters, having not shown otherwise, they have no right in law or equity. In *Sidek bin Haji Muhammad & 461 Ors v The Government of the State of Perak & Ors* [1982] 1 MLJ 313, Raja Azlan Shah CJ (Malaya) (as His Majesty then was) said (at p 314): H I

> It is well established that a court of equity will never assist squatters to resist an order of possession illegally acquired; it will never intervene in aid of wrongdoers. (See *Grafton v Griffin*). We would like to say this at once about squatters. The owner is not obliged to go to the courts to obtain an order of possession. He is entitled if he so wishes, to take the remedy into his own hands. He can go in himself and turn them out without the aid of the courts of law. He can even use force, so long as he uses no more force than is reasonably necessary. He will not then be liable either criminally or civilly. This however is not to be encouraged because of the disturbance which might follow but the legality of it is beyond question.

[23] We find no merit in relation to the respondent's argument that the appellants were not the registered proprietors under the Code. Regulation 10 of the said Regulations clearly provides that a local authority may enter on any private land for the purpose of demolishing any squatter hut Thus, we simply cannot see why this argument was canvassed when it has no bearing at all on the matter before this court. In the same light, we also simply cannot see why there was a need for the respondents to point out to this court in its submission that the appellants were not the 'State Authority' under the Code. Under the Code the words 'State Authority' means the Ruler or Governor of the State, as the case may be. We cannot find anywhere in the appeal record that the appellants have contended that they are the 'State Authority'.

[24] What the respondents have applied for in these proceedings is for a declaration that the said notices are null and void and for an order that the appellants be restrained from evicting the respondents by any manner whatsoever from the said property including harassing and threatening the respondents who are occupying the said property, in other words, a perpetual injunction. From our reading of his grounds of decision, we are of the view that the learned judge seems to have erroneously approached this matter as if it was an application for judicial review. The respondents have challenged the legality of the said notices by applying for a declaration that the said notices are null and void for the reasons discussed earlier one of which was that the appellants have acted ultra vires the said Regulations. In other words, the appellants' decision to issue the said notices, was contrary to law. We would have thought that such a decision should be challenged by way of judicial review in the form of perhaps an application for writs of certiorari or prohibition. In his book entitled *Administrative Law of Malaysia and Singapore*, Professor MP Jain said (at pp 357–359):

> The writs of certiorari and prohibition have so much in common that they can be considered together. Certiorari is the most commonly invoked writ in modern Administrative Law. The reason is that it is the principal means of invoking judicial review over the determinations already come into existence. But the parameters of certiorari and prohibition have been expanding in recognition of the need to impose judicial review over adjudicatory bodies. Today, certiorari goes not only to a body discharging a quasi-judicial function, but to any body determining the rights of the people. The modern trend is that wherever there is power to determine questions affecting the rights of persons, there is a duty to act judicially and such a determination is subject to certiorari. Certiorari has thus emerged into a general remedy for the control of decisions by the administration affecting rights of the people. Similar is the case with prohibition. As Lord Denning observed in *Regina v Greater London Council* [1976] 1 WLR 550:

> Just as the scope of certiorari has been extended to administrative authorities, so also with prohibition. It is available to prohibit administrative authorities from exceeding their powers, or misusing them. In particular, it can prohibit a licensing authority from making rules or granting licences which permit conduct that is contrary to law.

Certiorari is issued not only to a statutory body but even to a non-statutory body which is under a duty to act judicially and performing a public duty. It is not even confined to 'enforceable rights'.

Certiorari and prohibition differ from each other from a functional point of view. Certiorari is issued when the body in question has completed its work, disposed of the matter and given its determination; certiorari is thus issued to quash such a determination, Prohibition is used to prohibit a body from continuing with the case further. It is issued when the body concerned is still seised of the matter and has not yet completed its determination. There is thus a difference in stages of the proceedings when the two writs may be issued. These writs are issued on a few grounds only as it is not the policy of Administrative Law to interfere too much with the working of the bodies established by the legislature to decide controversies. Certiorari is issued when an adjudicatory body has infringed norms of natural justice, or acts under an invalid law, or commits errors of jurisdiction, or there is an error of law apparent on the face of the record, or where its decision is based on findings of fact for which there is no legal evidence to support. In general, prohibition lies on every such ground on which certiorari would lie if proceedings were completed. Most commonly, prohibition is used when a body has exceeded its jurisdiction, or embarked on a determination outside its jurisdiction, or when principles of natural justice have been infringed.

[25] The learned judge, as reflected in his grounds of decision, found that the appellants took action under the said Regulations in response to 'some administrative direction' of the State Secretary of Selangor and that that direction is irrelevant and furthermore it did not come about as a by-product of the appellant's 'own study and deliberation, but derived from another source, ie, the State Exco'. As such, he ruled 'that the defendants had never exercised its mind to subjectively conclude that it was expedient and necessary to demolish the houses in the interest of the public' and that 'this surely was a serious flaw'. He was of the view that since it was the State Exco who directed the appellants, through the State Secretary, to take action under reg 10 of the said Regulations, the opinion of the appellants that it was 'expedient and necessary' to demolish the squatter huts occupied by the respondents having regard to 'public interest' is seriously flawed. From our reading, the learned judge made a review of the manner in which the decision was made by the appellants as if the originating summons filed by the respondents was an application for judicial review. He seemed to have been more concerned with the decision-making process by the appellants and not with the decision itself. In *Chief Constable of the North Wales Police v Evans* [1982] 3 All ER; [1982] 1 WLR 1155 at p 1173, Lord Brightman said 'Judicial review is concerned, not with the decision, but with the decision-making process'.

[26] A perusal of the articles of the State Constitution of Selangor and the provisions of the Act would show that the learned judge's findings and assessment of the law was erroneous. Section 2 of the Act provides 'State Authority' means in relation to the States of West Malaysia 'the Ruler-in-Council or Governor-in-Council of a State and includes in Negeri Sembilan, the Yang di-Pertuan Besar acting on behalf of himself and the Ruling Chiefs'. Incidentally, section 3 of Part I of the

Interpretation Acts 1948 and 1967 (Consolidated and Revised 1989) which applies to all laws, whether enacted before or after the commencement of the Interpretation Act 1967, revised under the Revision of Laws Act 1968 provides that the word 'State Authority' means 'the Ruler or Yang di-Pertua Negeri of a State and includes, in Negeri Sembilan, the Yang di-Pertuan Besar acting on behalf of himself and the Ruling Chiefs'.

[27] Article 4 of the First Part of the Laws of the Constitution of Selangor (hereafter referred to as 'the State Constitution') provides the 'Sultan' means 'the Ruler of Selangor and includes His Successors'. Article 46 of the State Constitution provides 'His Highness' means 'the Head of State and includes His successors and where the context admits, His predecessors; and in the case of a Regency includes the Regent or if there is a Council of Regency such Council'. Article 46 also provides that the words 'State Executive Council' means the Majlis Mesyuarat Kerajaan establishedunder the provisions of this Part'. Consequently, Article 53 provides that His Highness shall appoint a Majlis Mesyuarat Kerajaan to be called in English the State Executive Council. As a consequence of adopting constitutional monarchy, His Highness is vested with the executive authority of the State but as a constitutional ruler he is to act in accordance with the advice of the State Executive Council or a member thereof acting under the general authority of the State Executive Council. This is clear from Articles 50 and 55(1) of the State Constitution.

[28] Article 50 reads:

> The executive authority of the State shall be vested in His Highness and exercisable, unless otherwise provided by the Federal Constitution or this Constitution, by him or by the State Executive Council or any member of the State Executive Council authorised by the State Executive Council, but executive functions may by law be conferred on other persons or authorities.

[29] Article 55(1) reads:

> (1) In the exercise of His functions underthis Constitution or any law or as a member of the Conference of Rulers, His Highness shall act in accordance with the advice of the State Executive Council or of a member thereof acting under the general authority of the Council except as otherwise provided by the Federal Constitution or this Constitution, but shall be entitled at His request to any information concerning the Government of the State which is available to the State Executive Council.

[30] Article 52 provides there shall be constituted, inter alia, the office of State Secretary and his appointment thereto shall be made by the appropriate Service Commission from among members of any of the relevant public service. The State Secretary shall be the principal officer in charge of administrative affairs of the State (art 52(2)) and such official shall have the right to take part in the proceedings, inter alia, of the State Executive Council and may be appointed to any Committee thereof (art 52(3)).

[31] Thus in the exercise of his functions under the law, a Ruler of a State shall act in accordance with the advice of the State Executive Council and this would of course

encompass the powers that a Ruler, as the State Authority, have under the provisions of the Act. As stated by Raja Azlan Shah FJ (as His Highness then was) in *PP v Datuk Haji Harun bin Haji Idris (No 2)* [1977] 1 MLJ 15, at p 20:

> It is the Executive Council who is the executive organ of the State Authority and exercise executive functions in the name of the Ruler.

[32] Section 3 of the Act provides the State Authority may by notification in the Gazette declare any area in such a State to be a local authority for that area. Section 8 provides the affairs of every local authority area shall be administered by a local authority. Section 9 of the Act entitled 'Power of State Authority to issue directions' reads:

> (1) The State Authority may from time to time give the local authority directions of a general character, and not inconsistent with the provisions of this Act, on the *policy* to be followed in the exercise of the powers conferred and the duties imposed on the loca1 authority by or under this Act in relation to matters which appear to the State Authority to affect the interests of the local authority area, and *the local authority shall as soon as possible give effect to all such directions.*
>
> (2) The local authority shall furnish the State Authority with such returns, accounts and other information with respect to the property and activities of the local authority as the State Authority may from time to time require.
>
> (Emphasis added.)

[33] What is clear in s 9 of the Act is that it is the State Authority, ie, the State Executive Council which determines policy. The learned judge acknowledged the fact that it was the policy of the State Authority to enforce the program of squatter cleansing, as he put it, in the State of Selangor. A policy such as that would necessitate the relevant authorities to take action and to clear away squatter huts to enable, inter alia, land owners to develop their land in an orderly manner which in turn would benefit the public in the form of infrastructure, proper drainage, roads and other form of amenities and utilities. Section 9 of the Act empowers the State Authority to issue directions to a local authority on the policy to be followed and the State Secretary, an ex-officio member of the State Executive Council and also the head of administration of the State Government, would surely be the most appropriate official to inform the appellants of the policy.

[34] In the light of the articles of the State Constitution of Selangor referred to earlier and the provisions of the Act, we cannot fathom the views of the learned judge, reproduced earlier, in relation to reg 10 of the said Regulations. The 'direction of the State Secretary' of Selangor certainly cannot be said to be 'irrelevant' as put by the learned judge. Consequently, the State Authority, is clearly entitled, by virtue of s 9 of the Act to give directions to a local authority on policy matters and the local authority 'shall as soon as possible give effect to all such directions' which would certainly include exercising its powers under reg 10 of the said Regulations. In relation to this, we would say, with respect, that the learned judge has misconstrued reg 10 of the said Regulations by reading into it 'preconditions' as he put it which have to be satisfied by the appellants before reg 10 can be 'invoked'.

[35] We would reiterate that the learned judge had erred in approaching this matter, as we have said earlier, as if it was a judicial review as his main ground for allowing the declaration was based on his findings on the 'decision-making process' of the appellants, viz., he reviewed the decision-making process of the appellants and came to the conclusion that it was flawed and hence quashed that decision by concluding that it contravenes the said Regulations.

[36] We are of the view that the learned judge also erred in law in granting the second prayer, viz., the perpetual injunction. According to *Osborn's Concise Law Dictionary* (7th Ed) a perpetual injunction 'is granted only after the plaintiff has established his right and the actual or threatened infringement of it by the defendant'. Section 50 of the Specific Relief Act 1950 ('SRA') provides preventive relief is granted at the discretion of the court by injunction, temporary or perpetual. Section 51(2) of the SRA provides:

> A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

[37] The effect of the perpetual injunction granted in this instant appeal would be tantamount to the respondents having established their right that they can continue to occupy the squatter huts erected on the said property and that the appellants cannot take any fresh action or act further under regulation 10 of the said Regulations against the respondents. The perpetual injunction would also be tantamount to vesting of a right to remain on the said property and indirectly the vesting of a right to occupy land by prescription, viz, the vesting of a right by reason of lapse of time. In other words, a title by prescription, which is of course foreign to our land law. Our Code clearly does not all provide for right to remain on land or right to occupy land by prescription.

[38] With respect to the learned judge, he did not seem to have given due consideration to the scope and purpose of the said Regulations and for whose benefit it is intended.

[39] Section 52(1) of the SRA provides a perpetual injunction may be granted to prevent the breach of an existing obligation in favour of the applicant, whether expressly or by implication. Section 52(3) of the SRA provides as follows:

> When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:
>
> (a) where the defendant is trustee of the property for the plaintiff;
>
> (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
>
> (c) where the invasion is such that pecuniary compensation would not afford adequate relief;
>
> (d) where it is probable that pecuniary compensation cannot be got for the invasion; and
>
> (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

[40] From our reading, the respondents do not at all fall within the contemplation of s 52(3) of the SRA. The subject matter are squatter huts as defined under reg 3 of the said Regulations. Squatters have no right either in law or equity. A

[41] The second appellant is clearly a public authority and it exercises public functions as local authority. The meaning assigned to the expression 'public authority' in the Federal Constitution also includes a local authority (see art 160(2)). In an application for an injunction where a public authority is involved, it is the duty of the court to consider the injury or inconvenience which may result to the public or whether it would be detrimental to public interest and welfare in case an injunction is granted. To grant the perpetual injunction under the circumstances of this case would have the effect of nullifying the said Regulations. The appellants have a statutory duty to perform under the said Regulations and once they decide to act under the same, they cannot be prevented from doing so by a perpetual injunction. We are also of the view that the granting of the perpetual injunction was an unwarranted exercise of discretionary powers. We would also think that this relief prayed for is beyond the jurisdiction of the court. B C D

[42] The respondents have not shown that there was a threatened invasion of their legal rights. The court of course has jurisdiction to protect property from an act threatened. But then the court, before granting an injunction to restrain the appellants from interfering with the respondents' occupation or possession, must first go into the question of the respondents' right to occupy the said property. This, the learned judge have failed to do so. As we have stated earlier, this is not a case of a judicial review of the appellant's decision or an abuse of discretion in the exercise of powers under the said Regulations or a case where statutory regulations conferring powers on an authority for one purpose have been used for a different purpose. The respondents have to show they are not squatters and have a legal right to occupy the land and that their abode is not a squatter hut. This they have failed to do so. E F

[43] For the reasons aforesaid, we would allow this appeal with costs here and below to be taxed and set aside the orders granted by the High Court on prayers (i) and (ii) of the originating summons and order that the deposit be refunded to the appellants. G

James Foong JCA (delivering dissenting judgment):

INTRODUCTION H

[44] The respondents have filed an application (encl 1) in the High Court at Shah Alam for the following reliefs:

(i) bahawa Notis Meroboh Bangunan (Peraturan 10) Peraturan-peraturan Perlu (Pembersihan Setinggan-setinggan 1969) tidak bertarikh yang dikeluarkan oleh Datuk Bandar Majlis Bandaraya Shall Alam dan terhadap plaintif-plaintif ('notis tersebut') adalali diisytiharkan sebagai tidak sah dan terbatal; I

(ii) bahawa Datuk Bandar Majlis Bandaraya Shah Alam adalah ditahan daripada mengusir plaintif-plaintif dengan apa cara sekali pun daripada tanah yang dikenali sebagai

GRN 43019, Lot No 37448 dan GM 1.849 Lot No. 17494 Mukim Kapar, Daerah Klang, Selangor Darul Ehsan ('Hartanah tersebut') termasuk mengganggu dan mengancam plaintif-plaintif yang menduduki Hartanah tersebut.

[45] On 7 July 2004, the High Court at Shah Alam granted this application with costs to the respondents. Dissatisfied with this decision, the appellants appealed to us.

[46] In their memorandum of appeal, the first ground raised by the appellants is that the learned judge of the High Court has erred in law and fact in allowing the reliefs sought by the respondents by relying on his grounds of decision for a different application (encl 3). Enclosure 3 is an application by the respondents for an interim injunction pending the disposal of encl 1.

[47] To understand this, it is necessary for me to set out the background facts of this case.

FACTS

[48] The first appellant is the Mayor of the town council of Shah Alam whilst the second appellant is the town council itself.

[49] On 23 October 2003, the appellants' servants and/or agents, assisted by the police and workers from the national power company (Tenaga Nasional Berhad) as well as representatives of the registered proprietor of the said land, attempted to demolish the respondents' houses on the said land. They were unsuccessful. The access road to the said land was blocked by a crowd.

[50] After this incident, the respondents filed this application (encl 1). Aside from this, they also filed an application (encl 3) for an interim injunction pending the disposal of encl 1. Enclosure 3 was heard before encl 1. It was heard inter parte and the learned judge allowed this respondents' application. His grounds of judgment is reported in *Yusuf bin Awang v Datuk Bandar Majlis Bandaraya Shah Alam & Majlis Bandaraya Shah Alam* [2004] 5 MLJ 360.

[51] Subsequently, on 7 July 2004, after hearing submissions of parties on encl 1, the learned judge granted the reliefs sought by the respondents. In his grounds of judgment for this enclosure, the learned judge said that he relied 'in toto on the same ground' as what he had decided in encl 3. He felt that there is no. 'precedent or law that prevents, me (him) from taking this easy course of action'. After explaining this he reproduced his entire grounds of judgment given for encl 3.

[52] It is my view that one should be cautious with such approach. Different legal principle or test may apply to different kinds of application. For instance, in this case, encl 3 is an application for an interim injunction whereas encl 1 is for a declaration and an order for a permanent injunction. In the former application (encl 3), the test to be applied is that as stated in the locus classicus case of *American Cyanamic Co v Ethicon Ltd* [1975] AC 396 where the first factor to be considered is whether 'there

is a serious question to be tried' before moving on to adequacy of damages and balance of convenience. But in an application for a permanent injunction, this test is no longer appropriate. To succeed in a permanent injunction, the respondents in encl 1 are required to prove their case to the required standard as set out in the civil law. So 'what sauce is good for the goose is also sauce for the gander' (quoting from the learned judge) may not be apt in a situation like this.

[53] Another shortcoming of this approach is that an issue raised in one application may not be, advanced in another. For instance, the learned judge had not touched on the main issue in encl 1 which is: whether the notices issued by an officer of the first appellant under reg 10 of the Essential (Clearance of Squatters) Regulations 1969 ('the said Regulations') are valid when they are not dated when considering encl 3.

[54] Though this approach of basing entirely on the ground given in one application for that of another is not ideal, nevertheless, for the purpose of this appeal, the appellate court has to rely on the grounds as provided by the trial judge.

ANALYSIS

First Issue: Are the notices issued by the first appellant to the respondents valid in law?

[55] Though the other grounds stated in the memorandum of appeal are widely and liberally phrased, I am of the view that essentially they come down to this in respect of the first prayer in encl 1: Whether the notices issued by the first appellant to the respondents are valid in law?

[56] To understand why such notices are required to be issued and served on the respondents, I reproduce reg 10 of the said Regulations:

> 10. (1) If in the opinion of a local authority it is expedient and necessary to do so having regard to the public interest then notwithstanding regulations 6 and 7, the local authority, its agents or servants may, after giving seven days' notice in writing to the occupier:
>
> (a) enter by day or by night any private land for the purpose of summarily demolishing any squatter hut; and
>
> (b) remove any person or movable property in any squatter hut; and
>
> (c) summarily demolish any squatter hut on the land
>
> (2) If the local authority demolishes any squatter hut in pursuance of this regulation, then the owner shall pay to the local authority a sum of money to meet the cost and expanses of...and shall indemnify and keep indemnified the local authority against any claim, damage, loss, action or proceedings that may be brought against the local authority including any cost and expenses arising out of and incidental to....

[57] Each of these notices served on the respondents is divided into two sections. The top section bears the logo and address of the second appellant. Then just beneath it is the name of the addressee. And below this, it reads:

PERATURAN-PERATURAN PERLU

(PEMBERSIHAN SETINGGAN-SETINGGAN 1969)

NOTIS MEROBOH-BANGUNAN (PERATURAN 10)

Adalah dimaklumkan bahawa satu siasatan / bancian telah dijalankan dan didapati tuan / puan telah mendirikan / mendiami binaan setinggan di ... (purported address of the respondents) tanpa kebenaran dari pihak Majlis.

2. Oleh yang demikian, tuan / puan didapati melakukan kesalahan di bawah Peramran-Peraturan Perlu (Pembersihan Setinggan-Setinggan) 1969. Tuan / Puan dikehendaki dalam tempoh 7 hari dari tarikh notis ini supaya menjalankan kerja-kerja yang perlu bagi maksud itu iaitu:

(a) mengalihkan apa-apa orang atau harta alih dan

(b) merobohkan apa-apa binaan di atas tanah tersebut.

SILA AMBIL PERHATIAN sekiranya tuan / puan didapati gagal / engkar mematuhi notis ini sehingga luput tempoh masa yang ditetapkan, pihak Majlis boleh mengambil tindakan tanpa sebarang notis selanjutnya ditetapkan lagi.

Apa-apa kerosakan dan kerugian adalah tanggungjawab tuan /puan sendiri. Pihak Majlis tidak akan memberi sebarang tuntutan gantirugi. Pihak Majlis juga akan menuntut kos dalam mengambil tindakan di atas.

Kod Kad Kuasa:

b/p.Datuk Bandar

Majlis Bandaraya Shah Alam

Saya ... mengaku telah menerima notis seperti di atas.

Tarikh:

No Kad Pengenalan:

[58] An examination of this notice will reveal that the top section is not dated. Only the bottom part, which is separated by a line drawn across to divide the notice, bears a date. But it is obvious that the bottom section is meant for the recipient to sign on and to insert the date when he received this notice. The date placed on this portion of the notice cannot, by any stretch of imagination, be considered as the date of issuance of this notice. However, despite this glaring fact, the appellants' representative in para 15 of his affidavit, affirmed on the 3 November 2003 (at p 99 of the appeal record), still maintains that:

> Notis-notis tersebut sememangnya bertarikh iaitu tarikh pengeluaran notis tersebut dan ianya telah dengan jelas menyatakan undang-undang bertulis yang telah digunapakai dan... jika dikira hari daripada tarikh operasi roboh yang dirujuk di perenggan 12 dengan tarikh notis-notis tersebut dikeluarkan, adalah jelas bahawa defendan-defendan mengguna-pakai tarikh pengeluaran notis-notis tersebut sebagai tarikhnya.

[59] I agree that there must have been a date when these notices were issued but this date is not written, or printed on these notices. This fact cannot be denied. Without a date of issuance how could the respondents know when the seven day

period is to commence. The exact period for compliance with these notices is essential for it accords the respondents an opportunity to pack and go if they are residing in squatter huts to avoid any drastic action of the appellants to demolish their structure and to evict them. This grace period of seven days, I believed, is based on a humanitarian ground otherwise the makers of such law would not have inserted this requirement into the said Regulation. For this, I hold the view that it is essential for the appellants to specifically inform the respondents when this seven day period is to commence for without this lead time so given it cannot be said when time begins to tick. Since these notices are without a commencement date, they are therefore invalid and bad in law.

[60] On this ground alone, I find it justified to allow prayer 1 of encl 1. Though it is true that the learned trial judge had not touched on this principal issue despite having heard arguments on it during the hearing of encl 1, nevertheless, since this appeal is by way of a re-hearing (s 69(1) of the Courts of Judicature Act 1964) I am permitted to arrive at the conclusion as stated:

Second Issue: Are the respondents entitled to a permanent injunction to restrain the appellants from evicting the respondents from the said land by threats or force?

[61] In respect of the second prayer in encl 1, the issue should be: Whether the respondents are entitled to a permanent injunction to restrain the appellants from evicting the respondents from the said land by force or threats?

[62] It is disappointing to note that in the learned judge's grounds of judgment, he made no direct reference to this. The closest I can get are his remarks that the respondents are not squatters. He expressed this in this fashion:

> Despite the fact that the defendants (appellants) did not own the impugned land no supporting affidavit had been filed by the owners stating that the plaintiffs (respondents) were indeed squatters in the common law sense. I had to bear in mind that this well-known village (Kampong Rimba Jaya) catering for a family of 1074 did not just materialize overnight but had been around for sometime without the landowners complaining. Sir Frederick Pollock in *Pollock on Tort* (15th Ed) has occasion to author that:
>
> > A trespasser may in any case be turned off land before he has gained possession, and he does not gain possession until there has been something like-acquiescence in the physical-fact of his occupation on the part of the rightful owner.
>
> Taking the matter a step further Kevin Gray and Susan Francis Gray in 'Elements of Land Law' had authored at p 138:
>
> > Licences may assume various forms and perform a multiplicity of purposes. The overlapping categories of the licence recognized by the law include bare licences, contractual licences, equitable or irrevocable licences, licences based on proprietary estoppel and licences with the grant of interest...
> >
> > The law of licence reflects the prerogative of the owner or possessor of land to dictate the terms on which access may be enjoyed by strangers... A 'bare licence' is accordingly a personal permission, granted otherwise than for consideration, to enter and be present upon the land of another ... The bare licence to enter land performs only the minimal

A function of providing a defence to what would otherwise be the tort of trespass. The licensee's liability in trespass revives when his licence is terminated.

In that context the plaintiffs would certainly qualify as a bare gratuitous licensees regardless of whether there was consideration for the occupation or otherwise. Perhaps due to this tacit approval, implying knowledge and encouragement on the part of the landowners, the village
B with all their structures had grown to what it is now. Being licencees they (the respondents) thus cannot be trespassers as they were there lawfully on the premises, whether pursuant to a matter of grace or benevolence of the owners. (Emphasis added.)

[63] I am afraid that the learned judge was not able to see the wood for the trees.
C Regulation 10 of the said Regulations is not concerned with the right of a person to be on the land. It relates only to the structure on the land known as 'squatter hut', and under reg 3 of the said Regulations 'squatter hut' is defined as:

D any house, hut, shed, stall, lean-to, shelter, roofed enclosure or any extension or structure attached to any building or other erection, of whatever materials made and whether used for the purpose of a human habitation or otherwise which has been erected or is in the course of erection otherwise than in accordance with a plan approved by a local authority or in respect of which a licence issued by a local authority has been cancelled, withdrawn or has expired and is situated on any land.

E **[64]** So reading this provision with reg 10, the appellants can, if they are of the opinion that it is expedient and necessary, after giving the occupant of such structure a seven day notice and upon termination of this period stated in the notice, proceed to demolish such structure. There is nothing in this regulation to say that the occupant of such structure must be a squatter or be proved a trespasser. As long as
F the conditions mentioned in reg 10(1) of the said Regulations are fulfilled, the appellants are at liberty to carry out demolition and eviction. Therefore to speak of the right to occupy the land on which the squatter hut is erected and of the absence of evidence to prove that the respondents are squatters is, in my view, completely irrelevant and off the mark.

G **[65]** Though the appellants may have made a slip this time by not inserting a date when issuing the notices but this should not prevent the appellants from carrying out their lawful duties again if circumstances warrant them to do so, and if they comply with the conditions set out in reg 10(1) of said Regulations. Thus, if the 2nd prayer in encl 1 is allowed, it would permanently prevent the appellants from taking any
H action against the respondents regardless of whether their structures on the said land are squatter huts. I do not think that this is fair and reasonable. If permitted, the appellants would be perpetually prohibited from carrying out their legal duties under the law even, as I have said, under different circumstances. Such order if granted, in my view, would tantamount to a perpetual injunction with far reaching
I consequences. First, it would indirectly create a perpetual right for the respondents to remain permanently on the said land with their structures. Second, this would even prevent the registered owner of the said land from seeking assistance from the appellants under regs 6(1) and 7 of the Regulations to assist in evicting the respondents from the said land if their structures are found to be squatter huts. Section 6(1) and section 7 of the Regulations provide:

6. Owner to demolish squatter huts on his land.

(1) The owner of any private land shall upon being served with a notice in writing by a local authority demolish the squatter hut on his land within:.such.period as the local authority may in the notice specify.

7. Owner may request the local authority to demolish squatter huts on his land.

In the case where the owner is unable to demolish the squatter hut within the time specified in the notice referred to in regulation 6, the owner may request the local authority to carry out the requirements of the notice in which case the owner shall:

(a) deposit with the local authority such sum of money (in the form of cash or Bankers' Guarantee) as the local authority may deem sufficient for the purpose of meeting the cost and expenses of —

(i) demolish the squatter hut;

(ii) removal of the movable property...;

(iii) storing the movable property...;

(iv) any other activities incidental to or arising out of subparagraphs (i), (ii) and (in); and

(b) indemnify and keep indemnified the local authority any claim, damage, loss, action or proceedings that may be brought against the local authority...

All these, I am afraid were overlooked by the learned judge.

CONCLUSION

[66] Based on the reasons aforesaid, I am of the view that this appeal should be allowed in part. The order of the learned judge- dated 7 July 2004 should be-substituted to read: first prayer in encl 1 allowed; the second prayer in encl 1 dismissed; and there should be costs to the plaintiffs for encl 1.

[67] As the appellant has only partially succeeded in this appeal, there shall be no order as to the costs for this appeal. Deposit for this appeal to be refunded to the appellants.

Appeal allowed.

Reported by Andrew Christopher Simon